IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11788 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIPSINH KHUMANSINH CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11788 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu

has challenged the detention order dated 18th October, 2002. By the said order, the petitioner is detained as a Dangerous Person under Prevention of Anti Social Activities Act, 1985. The order of detention is challenged by the petitioner by way of this petition.

2. The activity of the petitioner is highlighted in the detention order. There is reference of about 2 criminal cases under Sections 384 and 392 of IPC. The petitioner detenu has challenged the said order on various grounds.

3. On behalf of the petitioner, it is argued that at the time when the detention order was passed, the petitioner was already in judicial custody yet the detaining authority has detained the petitioner under preventive detention. The detaining authority has stated in the detention order at page 21 that the petitioner is in judicial custody in connection with the case at SNo.1 and that, his bail application is rejected by the Court. It is, however, stated in the order that the petitioner may get bail and thereafter he may continue the said activities again. So far as case at SNo.2 is concerned, even though he has been granted bail, but for want of giving surety he is still in judicial custody.

4. The learned advocate for the petitioner has relied upon the decision of the Apex Court in the case of Amritlal and others V. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 Supreme Court 3675 wherein it is observed as under:-

" ... ...

4. In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as

above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

5. Atleast the detaining authority was required to state the reasons as to on what basis it has reached the conclusion that the petitioner may be released on bail especially when the detaining authority has not stated as to on what material said satisfaction is reached by it.

6. Considering the nature of the detention order passed by the detaining authority, in my view the detaining authority has not given proper reasons as to why it is necessary to detain the petitioner under

preventive detention even though he is in judicial custody.

7. On the aforesaid view of the matter, the petition succeeds and the same is allowed. The order of detention under challenge is quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)

Jayanti*